IN THE HIGH COURT OF BOMBAY AT GOA
****

FIRST APPEAL NO. 22 OF 1999

1. Shri Dionisio Antonio Francisco Xavier Ribeiro (since deceased by his legal heirs):

1.a) Francisco Ribeiro (son),

1.b) Mrs. Lynette Cabral e Ribeiro (wife of Appellant no.1.a).

1.c) John Ribeiro (bachelor son), all majors, r/o Margao,

2. Smt. Matildes da Silva Ribeiro (since deceased by legal heirs),

2.a) Francisco de Paula S. Roque Ribeiro,

2.b) Joao Baptista Ribeiro, both major and both r/o Margao, Goa. (The appellant No.1(a) and 2(a) is one and the same person and the appellant no.2(a) and 2(b) is one and the same person. Both appellants 1(a) and 1(c) i.e.2(a) and 2(b) are heirs of appellants shown at Sr.No.1 and 2. Appellant no.1(b) is wife of appellant no.1(a),

3. Smt. Prisca Lira Ribeiro e Costa, widow r/o Margao, since deceased by legal heirs

3.a) Maria Rita Ribeiro Costa D'Souza (Daughter),

3.b) Wolsey Noberto Mario D'Souza (son in law), both residing at Bensi Sadan, Near Woodlen's Hotel, Margao, Goa. ....Appellants.

Versus

1. Shri Francisco de Paula

Conceicao (since deceased),

2. Kum. Maria Lilia Elsa Ribeiro,
major, r/o Margao, Goa. ....Respondents.

Shri V.P. Thali, with Kum. G. Pednekar, advocates for the appellants.

Shri S. D. Lotlikar, Senior Advocate with Kum. Shambhavi Dessai, advocate for the respondents.

CORAM : R. J. KOCHAR, J.

DATE : 12th September, 2003.

ORAL JUDGMENT

The appellants/plaintiffs are aggrieved by the impugned Judgment and Decree dated 2nd September, 1998, passed in Special Civil suit No. 14/73/I by the Ist Additional Civil Judge, Senior Division at Margao. The suit was instituted for the purpose of declaring null and void the entire proceedings of inventory no.18657 of 1971. The learned trial Court was pleased to dismiss the suit by the impugned Judgment and Order.

2. It was the case of the plaintiffs that the valuation in inventory was not done properly. The learned Judge has considered the pleadings and the evidence before him. It is an admitted position that the plaintiffs were intimated about the inventory proceedings by the Administrator, but they remained absent for the reasons best known to them. Thereafter the plaintiffs also remained absent at the time of auction of the property, subject-matter of the inventory proceedings. Before the auction the trial Court had determined the reserved price

or upset price. At the time of auction, if the plaintiffs had remained present, they could have given a higher bid to purchase the property. It is thus clear that the plaintiffs have remained absent at the crucial time on both the occasions. The plaintiffs have however, made a grievance in the present suit and appealed that the property was under-valued and that it was worth Rs.5,00,000/- and that it was purchased for a sum of Rs.40,000/-.

3. I have gone through the entire proceedings. There is absolutely no evidence in support of the contentions of the plaintiffs that the value of the property was Rs.5,00,000/- or even Rs.3,00,000/-, as suggested by the learned counsel appearing for the appellants. The valuer who was examined before the trial Court had not submitted his report basing his valuation of the property. He has not given any reasons why he had valued the property to the tune of Rs.3,00,000/- or Rs.4,00,000/-, as suggested by him. It is significant to note that the appellants had valued the property at Rs.5,00,000/- while their own valuer has valued the same for Rs.3,00,000/-. It is well-known that valuation of any property would depend upon several factors, including the time at which the property was being valued. Very often, there is fluctuation in the prices of the properties in the market. It is further pertinent to note

that the relevant point for valuation of the property was 1967, but the valuation carried out by the valuer on behalf of the appellants/plaintiffs was in the year 1971. There is no explanation for this delay and there is also no material to conclude how such fluctuation in the prices of the property under question has taken place. In the aforesaid circumstances, the trial Court has not accepted the evidence of the valuer and, therefore, it has held that the decision in the inventory proceedings could not be challenged. We cannot find fault with the decision of the trial Court in the aforesaid circumstances. The learned Judge has rightly observed that the relevant date of valuation was the date of the death of the person who left the estate. In the present case, it was 23rd June, 1967. The valuation must be approximately for that period and certainly not 1971. The learned Judge has rightly held that the valuation of the property done in 1971 cannot be considered to be legal valuation. There is no dispute that the valuation done by the Court was by the valuer appointed under the law before auction. I have already observed that inspite of notice of auction, the plaintiffs did not avail of the opportunity to contest the auction. They have merely made an allegation of fraud and collusion for which there is absolutely no evidence. The learned trial Judge has, therefore, rightly held that the plaintiffs have failed to establish that the valuation report was obtained by fraud or collusion. Further, the

learned Judge has rightly held that all the co-heirs were joined to the inventory proceedings and, therefore, there was no fraud or bad faith. The learned Judge has also rightly found fault with the plaintiffs in not participating in inventory proceedings inspite of notice. They also had notice of auction, but they had remained absent at the time of the auction of the property.

4. I am not able to find any illegality or infirmity in the impugned Judgment and Order passed by the trial Court. It is also not in the interest of justice to re-open the inventory proceedings which were concluded in the year 1967. There is no substance in the appeal and hence the same is dismissed with no order as to costs.

R. J. KOCHAR, J.

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